

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

REMARKS

After the foregoing Amendment, claims 22, 24, and 26 - 42 are currently pending in this application. Claims 23 and 25 are cancelled without prejudice. Claims 22, 24, 26, and 27 are amended. New claims 40 – 42 are added. Support for the Amendment, including the new claims, can be found in the specification at page 4, lines 4 – 13, 22 – 24, 31 – 33; page 5, lines 13 – 18; page 7, lines 26 – 29; and page 9, lines 7 – 12. Applicant submits that no new matter is introduced into the application by these amendments.

The Action states that Applicant elected Group II without traverse and indicated that Group II included claims 22 – 27. Applicant elected Group I, which corresponds to claims 22 – 27, as identified by the April 29, 2008 Office Action. Applicant notes that the correct claims were examined but respectfully requests that the acknowledgement of election be corrected.

Claim Rejections - 35 USC § 112

First Paragraph, Written Description

The Action rejects claims 22 – 27 for allegedly lacking proper support in the written description. Obviating amendments are made.

Applicant requests withdrawal of the 35 U.S.C. §112, first paragraph rejection of claims 22 – 27.

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

Second Paragraph

The Action rejects claims 24 and 25 for allegedly being indefinite. Claim 24 has been amended to obviate this rejection, and claim 25 has been canceled.

Applicant requests withdrawal of the 35 U.S.C. §112, second paragraph rejection of claim 24.

Claim Rejections - 35 USC § 103

Reckitt and Hickinbotham

The Action rejects claims 22 and 23 as obvious over AU 71589/74 (Reckitt & Colman) and U.S. pre-grant application publication No. 2003/0194302 (Hickinbotham). Claim 23 is cancelled and its rejection is moot.

It is immediately apparent that the nature of beverage being treated in Reckitt & Colman is quite different from the wine matured in the claimed method. See, for instance, lines 1 and 2 of the Reckitt & Colman which refers to the manufacture of sherry style wines. At the bottom of page 2, Reckitt & Colman states "Disadvantages of the solera process are that considerable storage space is required and capital, in the form of maturing wines and casks is tied up for excessively long periods". At page 3, Reckitt & Colman continues to discuss speeding up maturation and it is clear from the succeeding description that substantial exposure to oxygen is required to speed up the process. On page 8, Reckitt & Colman goes so far as to say "for large scale wine production, however, it

may be desirable to pass the young wine or must through a series of pipes of the oxygen permeable plastic material during maturation so as to ensure that a sufficiently large surface area of the wine or must is allowed to contact an oxygenated gas, generally the atmosphere, by the oxygen permeable material." Thus, the whole thrust of Reckitt & Colman is high rate of oxygenation of sherry style wines to provide rapid maturation with a very high rate of oxygen absorption so that maturation occurs rapidly, *i.e.* in weeks. See, Example 2, in which the sherry is bottled at a mere four weeks.

Such a high rate of oxygen absorption would be quite unsuitable if it was to be applied to the maturation of table wines. As explained in the instant application, the infusion of high rates of oxygen results in formation of acetaldehyde. See page 3, lines 27 – 33. Acetaldehyde gives sherry style wines their distinctive flavor. One of ordinary skill in the art understands that this gives an undesirable spoiled taint, *i.e.* volatile acidity, to the wine and thus must be avoided at all costs. If even a small fraction of the level of acetaldehyde typically found in sherry were found in dry table wine, that wine would be considered spoiled. The rate of oxygenation thus needs to be controlled at levels substantially below that applicable for sherry. Furthermore, sherry needs free surface for growth of yeasts under suitable conditions to give rise to sherry flor. By contrast, the maturation of table wines requires that free surface be avoided so as to avoid contact with oxygen. Alternatively the gases exposed to the free surface must not contain oxygen.

Claim 22, as amended, recites:

A method of maturing wine in bulk comprising,

storing the wine in a closed container over a period of at least four months, the container having a capacity of at least 225 litres and self supporting walls, the walls having an exterior exposed to the atmosphere,

wherein the walls of the container comprise polyethylene which allows oxygen to permeate the walls directly from the atmosphere into the wine in contact with the walls at a rate less than 80 milligram of oxygen per litre of wine per year.

Emphasis added. Thus, Applicant's invention differs markedly from that of Reckitt & Colman by virtue of the period of maturation. It also differs dramatically in relation to the rate of uptake of oxygen. One of ordinary skill in the art would know that to store wine under the teachings of Reckitt & Colman for at least four months would result in wine that is completely tainted and undrinkable. Not only does Reckitt & Colman fail to teach all of the elements of Applicant's invention, it actually teaches away from the invention as a skilled person reading Reckitt & Colman would not consider using the techniques disclosed therein to mature wine as claimed, as the techniques would lead to spoilage.

In relation to Hickinbotham, Applicant observes that this reference relates to a flexible bag container with a support structure, the construction being such that the container is designed for grape must fermentation with provisions for venting excess carbon dioxide and controlling gas flow between the grape must and the container exterior. Hickinbotham goes into considerable detail in relation to

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

fermentation of must and is clearly focused on this aspect. However, in a section headed "wine maturation" there is reference to allowing varying levels of carbon dioxide and oxygen to permeate ... creating opportunities for medium and slow maturation. It is important to realize, however, that there does not appear to be any suggestion that the "maturation" is other than during the initial fermentation stage which is relatively short. Although Hickinbotham discusses this "maturation," one of ordinary skill in the art would understand that the "maturation" discussed is distinct from the claimed invention. In fact, Hickinbotham teaches that the flexible bag has a high rate of oxygenation leading to "rapid maturation." See Paragraph 91. Maturation during the short fermentation is quite different than the maturation envisaged for Applicant's invention, which corresponds to maturation in wine barrels over periods of months and years after fermentation.

Hickinbotham refers to the initial fermentation stage prior to maturation in barrels. In the normal course of events following fermentation, one of ordinary skill in the art expects that the wine from the Hickinbotham containers would be drawn off, filtered and then placed in barrels for long term maturation. There is no suggestion in Hickinbotham that the wine and entrained grapes should be left in the Hickinbotham container to mature together over a long maturation period. One of ordinary skill in the art knows that this is clearly inappropriate. Furthermore, there is no description indicating that the wine should be drained from the

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

container and separated from the fermentation by-products before being placed in another similar container for maturation over a long period.

For emphasis, Applicant submits that a person of ordinary skill in the art would read Hickinbotham as directed to fermentation. It is difficult to see that such a person would view it as an approach for maturing wine equivalent to that obtained by maturing in barrels. Hickinbotham is non-analogous art in that it is directed to an entirely different process – fermentation. In addition, Hickinbotham teaches a flexible bag, which is structurally distinct from the claimed invention. Hickinbotham, taken alone or in combination with Reckitt & Colman, fails to teach

storing the wine in a closed container over a period of at least four months, the container having a capacity of at least 225 litres and self supporting walls, the walls having an exterior exposed to the atmosphere....

Emphasis added. Moreover, there does not appear to be anything which would provide “some motivation or suggestion to combine” Reckitt & Colman and Hickinbotham to come with Applicant’s invention. Indeed, Reckitt & Colman relates to high oxygen manufacture of sherry, and Hickinbotham relates to grape fermentation in a bag. Given that both references are non-analogous and teach away from the claimed invention, one of ordinary skill in the art would not combine the references to arrive at the claimed invention.

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

Nonetheless, if Reckitt & Colman and Hickinbotham were combined, the combination fails to teach all of the elements of the claimed invention, as set forth above.

The Action admits that the cited prior art references fail to teach all of the elements of any one of the claims, as amended. To come to the conclusion that the claims are obvious, the Action states that the elements missing from the cited prior art references would be arrived at by routine experimentation. However, as set forth in the enclosed 37 C.F.R. §1.132 Declaration of Anthony E. Flecknoe-Brown, the claimed invention resulted from substantial inventive activity. Mere combination of prior art maturation techniques failed to arrive at a suitable method of maturation, i.e., it was unpredictable that wine with the proper characteristics could be obtained through the process recited in claim 22, as amended:

A method of maturing wine in bulk comprising,

storing the wine in a closed container over a period of at least four months, the container having a capacity of at least 225 litres and self supporting walls, the walls having an exterior exposed to the atmosphere,

wherein the walls of the container comprise polyethylene which allows oxygen to permeate the walls directly from the atmosphere into the wine in contact with the walls at a rate less than 80 milligram of oxygen per litre of wine per year.

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

Based on the foregoing, Applicant believes that the 35 U.S.C. §103 rejection of claim 22 as obvious over Reckitt & Colman and Hickinbotham is overcome and respectfully requests withdrawal of the same.

Reckitt, Hickinbotham, and Diaz

The Action rejects claims 24 - 26 as obvious over Reckitt & Colman in view of Hickinbotham and U.S. pre-grant application publication No. 2004 0226451 (Diaz). Claim 25 is canceled and its rejection is moot.

Diaz fails to overcome the deficiencies of Reckitt & Colman in view of Hickinbotham, as set forth above. Based on the foregoing, Applicant believes that the 35 U.S.C. §103 rejection of claims 24 and 26 as obvious over Reckitt & Colman in view of Hickinbotham and Diaz is overcome and respectfully requests withdrawal of the same.

Reckitt, Hickinbotham, Diaz, and French 2 736 923

The Action rejects claim 27 as obvious over Reckitt & Colman in view of Hickinbotham, Diaz, and French 2 736 923.

French 2 736 923 fails to overcome the deficiencies of Reckitt & Colman in view of Hickinbotham, as set forth above. Based on the foregoing, Applicant believes that the 35 U.S.C. §103 rejection of claim 27 as obvious over Reckitt & Colman in view of Hickinbotham, Diaz and French 2 736 923 is overcome and respectfully requests withdrawal of the same.

Applicant: Flecknoe-Brown et al.
Application No.: 10/580,524

Conclusion

If the Examiner believes that any additional formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicant respectfully submits that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Flecknoe-Brown et al.

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Enclosure